

## **Senate Bill No. 693**

### **CHAPTER 774**

An act to amend Sections 17250.25 and 17407.5 of the Education Code, to amend Section 25536.7 of the Health and Safety Code, and to amend Sections 10191, 20119.1, 20119.3, 20155.4, and 22164 of, to repeal Section 20155.2 of, and to add Chapter 2.9 (commencing with Section 2600) to Part 1 of Division 2 of, the Public Contract Code, relating to employment.

[Approved by Governor September 28, 2016. Filed with  
Secretary of State September 28, 2016.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 693, Hueso. Public contracts: skilled and trained workforce.

Existing law establishes specific instances where a public entity is required to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.

This bill would establish provisions to be generally applicable when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project. The bill would also authorize a public entity to require that a bidder, contractor, or other entity use a skilled and trained workforce to complete a contract or project.

Existing law relating to school facilities provides for the lease of property and prohibits the governing board of a school district from entering into specific lease agreements for the construction of buildings for the use of the school district with any entity unless the entity provides to the governing board an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

Existing law relating to school facilities, operative July 1, 2016, and until January 1, 2025, also authorizes a school district, with the approval of the governing board of the school district, to procure design-build contracts for certain public works projects, as provided, and prohibits a design-build entity from being prequalified or shortlisted unless the entity provides a similar enforceable commitment to the school district with respect to the use of a skilled and trained workforce.

Existing law relating to the Department of General Services and the Department of Corrections and Rehabilitation authorizes the Director of General Services and the Secretary of the Department of Corrections and Rehabilitation to procure design-build contracts for certain public works projects, as provided, and prohibits a design-build entity from being

prequalified or shortlisted unless the entity provides a similar enforceable commitment to the departments with respect to the use of a skilled and trained workforce.

Existing law relating to local agencies authorizes a local agency to procure design-build contracts for certain public works projects, as provided, and prohibits a design-build entity from being prequalified or shortlisted unless the entity provides a similar enforceable commitment to a local agency with respect to the use of a skilled and trained workforce.

Existing law, until January 1, 2021, establishes a pilot program to authorize the Los Angeles Unified School District to use a best value procurement method for bid evaluation and selection for certain public projects (LAUSD pilot program). The LAUSD pilot program precludes the prequalification or shortlisting of a best value entity unless the entity provides a similar enforceable commitment to the governing board of the district with respect to the use of a skilled and trained workforce.

Existing law establishes a pilot program to allow the Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba to select a bidder on the basis of best value, as defined, for specific construction projects (pilot program for counties). The pilot program for counties precludes the prequalification or shortlisting of a best value contractor unless the contractor provides a similar enforceable commitment to the county with respect to the use of a skilled and trained workforce.

This bill would revise those provisions specifically applicable to school facilities, the Department of General Services, the Department of Corrections and Rehabilitation, and local agency design-build projects, the LAUSD pilot program, and the pilot program for counties to require, instead, an enforceable commitment for the use of a skilled and trained workforce in accordance with the above-described generally applicable provisions for the use of a skilled and trained workforce, unless there is a prescribed project labor agreement.

The bill, except as specified, would not apply to contracts advertised for bid or awarded before January 1, 2017.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

*The people of the State of California do enact as follows:*

SECTION 1. Section 17250.25 of the Education Code, as added by Section 2 of Chapter 752 of the Statutes of 2015, is amended to read:

17250.25. The procurement process for design-build projects shall progress as follows:

(a) (1) The school district shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but are not limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the school district's needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) The documents shall not include a design-build-operate contract for a project. The documents, however, may include operations during a training or transition period, but shall not include long-term operations for a project.

(b) The school district shall prepare and issue a request for qualifications in order to prequalify, or develop a short-list of, the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but is not limited to, all of the following elements:

(1) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the school district to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(2) Significant factors that the school district reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other nonprice-related factors.

(3) A standard template request for statements of qualifications prepared by the school district. In preparing the standard template, the school district may consult with the construction industry, the building trades and surety industry, and other school districts interested in using the authorization provided by this chapter. The template shall require the following information:

(A) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the shareholders, partners, or members known at the time of statement of qualification submission who will perform work on the project.

(B) Evidence that the members of the design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete, projects of similar size, scope, or complexity, and that the proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and a financial statement that ensures that the design-build entity has the capacity to complete the project.

(C) The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(E) Information concerning workers' compensation experience history and a worker safety program.

(F) If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

(G) An acceptable safety record. A proposer's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category, or if the proposer is a party to an alternative dispute resolution system, as provided for in Section 3201.5 of the Labor Code.

(4) (A) The information required under this subdivision shall be certified under penalty of perjury by the design-build entity and its general partners or joint venture members.

(B) Information required under this subdivision that is not otherwise a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(c) (1) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the school district that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeshipable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the school district prior to January 1, 2017.

(C) The entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, "project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

(d) Based on the documents prepared as described in subdivision (a), the school district shall prepare a request for proposals that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner

prescribed by the school district. The request for proposals shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the school district to evaluate proposals, whether the contract will be awarded on the basis of low bid or best value, and any other information deemed necessary by the school district to inform interested parties of the contracting opportunity.

(2) Significant factors that the school district reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors.

(3) The relative importance or the weight assigned to each of the factors identified in the request for proposals.

(4) Where a best value selection method is used, the school district may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the school district shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the school district to ensure that any discussions or negotiations are conducted in good faith.

(e) For those projects utilizing low bid as the final selection method, the competitive bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and awards shall be made to the design-build entity that is the lowest responsible bidder.

(f) For those projects utilizing best value as a selection method, the design-build competition shall progress as follows:

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be weighted as deemed appropriate by the school district:

(A) Price, unless a stipulated sum is specified.

(B) Technical design and construction expertise.

(C) Life-cycle costs over 15 or more years.

(2) Pursuant to subdivision (d), the school district may hold discussions or negotiations with responsive proposers using the process articulated in the school district's request for proposals.

(3) When the evaluation is complete, the responsive proposers shall be ranked based on a determination of value provided, provided that no more than three proposers are required to be ranked.

(4) The award of the contract shall be made to the responsible design-build entity whose proposal is determined by the school district to have offered the best value to the public.

(5) Notwithstanding any other provision of law, upon issuance of a contract award, the school district shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award.

(6) The statement regarding the school district's contract award, described in paragraph (5), and the contract file shall provide sufficient information to satisfy an external audit.

SEC. 2. Section 17407.5 of the Education Code is amended to read:

17407.5. (a) The governing board of a school district shall not enter into an agreement pursuant to Section 17406 or 17407 with any entity unless the entity provides to the governing board of the school district an enforceable commitment that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

(b) Subdivision (a) shall not apply if any of the following requirements are met:

(1) The governing board of the school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce and the entity agrees to be bound by that project labor agreement.

(2) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the school district prior to January 1, 2017.

(3) The entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(c) For purposes of this section, "project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.

SEC. 3. Section 25536.7 of the Health and Safety Code is amended to read:

25536.7. (a) (1) An owner or operator of a stationary source that is engaged in activities described in Code 324110 or 325110 of the North American Industry Classification System (NAICS), as that code read on January 1, 2014, and with one or more covered processes that is required to prepare and submit an RMP pursuant to this article, when contracting for the performance of construction, alteration, demolition, installation, repair, or maintenance work at the stationary source, shall require that its contractors and any subcontractors use a skilled and trained workforce to perform all onsite work within an apprenticeable occupation in the building and construction trades. This section shall not apply to oil and gas extraction operations.

(2) The Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations may approve a curriculum of in-person classroom and laboratory instruction for approved advanced safety training for workers at high hazard facilities. That safety training may be provided by an apprenticeship program approved by the chief or by instruction provided by the Chancellor of the California Community Colleges. The chief shall approve a curriculum in accordance with this paragraph by

January 1, 2016, and shall periodically revise the curriculum to reflect current best practices. Upon receipt of certification from the apprenticeship program or community college, the chief shall issue a certificate to a worker who completes the approved curriculum.

(3) For purposes of paragraph (2) of subdivision (b) of Section 3075 of the Labor Code, a stationary source covered by this section shall be considered in determining whether existing apprenticeship programs do not have the capacity, or have neglected or refused, to dispatch sufficient apprentices to qualified employers who are willing to abide by the applicable apprenticeship standards.

(4) This section shall not apply to contracts awarded before January 1, 2014, unless the contract is extended or renewed after that date.

(5) (A) This section shall not apply to the employees of the owner or operator of the stationary source or prevent the owner or operator of the stationary source from using its own employees to perform any work that has not been assigned to contractors while the employees of the contractor are present and working.

(B) An apprenticeship program approved by the chief may enroll, with advanced standing, applicants with relevant prior work experience at a stationary source that is subject to this section, in accordance with the approved apprenticeship standards of the program.

(6) The criteria of subparagraph (A) of paragraph (10) of subdivision (b), subparagraph (C) of paragraph (10) of subdivision (b), and subparagraph (B) of paragraph (11) of subdivision (b) shall not apply to either of the following:

(A) To the extent that the contractor has requested qualified workers from the local hiring halls that dispatch workers in the apprenticeable occupation and, due to workforce shortages, the contractor is unable to obtain sufficient qualified workers within 48 hours of the request, Saturdays, Sundays, and holidays excepted. This section shall not prevent contractors from obtaining workers from any source.

(B) To the extent that compliance is impracticable because an emergency requires immediate action to prevent harm to public health or safety or to the environment, but the criteria shall apply as soon as the emergency is over or it becomes practicable for contractors to obtain a qualified workforce.

(7) The requirement specified in paragraph (1) for a skilled and trained workforce, as defined in paragraph (11) of subdivision (b), shall apply to each individual contractor's and subcontractor's onsite workforce.

(8) This section does not make the construction, alteration, demolition, installation, repair, or maintenance work at a stationary source that is subject to this section a public work, within the meaning of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code. This section does not preclude the use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(b) As used in this section:

(1) “Apprenticeable occupation” means an occupation for which the chief has approved an apprenticeship program pursuant to Section 3075 of the Labor Code.

(2) “Approved advanced safety training for workers at high hazard facilities” means a curriculum approved by the chief pursuant to paragraph (2) of subdivision (a).

(3) “Building and construction trades” has the same meaning as in Section 3075.5 of the Labor Code.

(4) “Chief” means the Chief of the Division of the Apprenticeship Standards of the Department of Industrial Relations.

(5) “Construction,” “alteration,” “demolition,” “installation,” “repair,” and “maintenance” have the same meanings as in Sections 1720 and 1771 of the Labor Code.

(6) “Graduate of an apprenticeship program” means either of the following:

(A) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code.

(B) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(7) “Onsite work” shall not include catalyst handling and loading, chemical cleaning, or inspection and testing that was not within the scope of a prevailing wage determination issued by the Director of Industrial Relations as of January 1, 2013.

(8) “Prevailing hourly wage rate” means the general prevailing rate of per diem wages, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, but does not include shift differentials, travel and subsistence, or holiday pay. Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker.

(9) “Registered apprentice” means an apprentice registered in an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code who is performing work covered by the standards of that apprenticeship program and receiving the supervision required by the standards of that apprenticeship program.

(10) “Skilled journeyperson” means a worker who meets all of the following criteria:

(A) The worker either graduated from an apprenticeship program for the applicable occupation that was approved by the chief, or has at least as many hours of on-the-job experience in the applicable occupation that would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.



(B) The worker is being paid at least a rate equivalent to the prevailing hourly wage rate for a journeyperson in the applicable occupation and geographic area.

(C) The worker has completed within the prior two calendar years at least 20 hours of approved advanced safety training for workers at high hazard facilities. This requirement applies only to work performed on or after January 1, 2018.

(11) “Skilled and trained workforce” means a workforce that meets both of the following criteria:

(A) All the workers are either registered apprentices or skilled journeypersons.

(B) (i) As of January 1, 2014, at least 30 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation.

(ii) As of January 1, 2015, at least 45 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation.

(iii) As of January 1, 2016, at least 60 percent of the skilled journeypersons are graduates of an apprenticeship program for the applicable occupation.

SEC. 4. Chapter 2.9 (commencing with Section 2600) is added to Part 1 of Division 2 of the Public Contract Code, to read:

#### CHAPTER 2.9. SKILLED AND TRAINED WORKFORCE REQUIREMENTS

2600. (a) This chapter applies when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.

(b) A public entity may require a bidder, contractor, or other entity to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

2601. For purposes of this chapter:

(a) “Apprenticeable occupation” means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

(b) “Chief” means the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

(c) “Graduate of an apprenticeship program” means either of the following:

(1) An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code.

(2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(d) “Skilled and trained workforce” means a workforce that meets all of the following conditions:

(1) All the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

(2) (A) For work performed on or after January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation.

(B) For work performed on or after January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation.

(C) For work performed on or after January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation.

(D) For work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation.

(3) For an apprenticeable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirements of paragraph (2) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief’s approval of an apprenticeship program for that occupation in the county in which the project is located.

(4) The apprenticeship graduation percentage requirements of paragraph (2) are satisfied if, in a particular calendar month, either of the following is true:

(A) At least the required percentage of the skilled journeypersons employed by the contractor or subcontractor to perform work on the contract or project meet the graduation percentage requirement.

(B) For the hours of work performed by skilled journeypersons employed by the contractor or subcontractor on the contract or project, the percentage of hours performed by skilled journeypersons who met the graduation requirement is at least equal to the required graduation percentage.

(5) The contractor or subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if, during the calendar month, the contractor or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the contract or project.

(6) A subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if both of the following requirements are met:

(A) The subcontractor was not a listed subcontractor under Section 4104 or a substitute for a listed subcontractor.

(B) The subcontract does not exceed one-half of 1 percent of the price of the prime contract.

(e) “Skilled journey person” means a worker who either:

(1) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(2) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

2602. (a) When a contractor, bidder, or other entity is required to provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project, the commitment shall be made in an enforceable agreement with the public entity or other awarding body that provides both of the following:

(1) The contractor, bidder, or other entity, and its contractors and subcontractors at every tier, will comply with this chapter.

(2) The contractor, bidder, or other entity will provide to the public entity or other awarding body, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with this chapter.

(b) If the contractor, bidder, or other entity fails to provide the monthly report required by this section, or provides a report that is incomplete, the public agency or other awarding body shall withhold further payments until a complete report is provided.

(c) If a monthly report does not demonstrate compliance with this chapter, the public agency or other awarding body shall withhold further payments until the contractor, bidder, or other entity provides a plan to achieve substantial compliance with this chapter, with respect to the relevant apprenticeable occupation, prior to completion of the contract or project.

(d) A monthly report provided to the public agency or other awarding body shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall be open to public inspection.

SEC. 5. Section 10191 of the Public Contract Code is amended to read:

10191. The procurement process for the design-build projects shall progress as follows:

(a) (1) The director shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the department’s needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) The documents shall not include a design-build-operate contract for any project. The documents, however, may include operations during a training or transition period but shall not include long-term operations for any project.

(b) The director shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the department to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the director to inform interested parties of the contracting opportunity.

(2) Significant factors that the department reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, and all other nonprice-related factors.

(3) A standard template request for statements of qualifications prepared by the department. In preparing the standard template, the department may consult with the construction industry, the building trades and surety industry, and other agencies interested in using the authorization provided by this article. The template shall require the following information:

(A) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the shareholders, partners, or members known at the time of statement of qualification submission who will perform work on the project.

(B) Evidence that the members of the design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and a financial statement that ensures that the design-build entity has the capacity to complete the project.

(C) The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(E) Information concerning workers' compensation experience history and a worker safety program.

(F) If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

(G) An acceptable safety record. A proposer's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most

recent three-year period does not exceed the applicable statistical standards for its business category or if the proposer is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(4) (A) The information required under this subdivision shall be certified under penalty of perjury by the design-build entity and its general partners or joint venture members.

(B) Information required under this subdivision that is not otherwise a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(c) (1) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the director that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The department has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the department prior to January 1, 2017.

(C) The entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, “project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

(d) Based on the documents prepared as described in subdivision (a), the director shall prepare a request for proposals that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the department. The request for proposals shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the department to evaluate proposals, whether the contract will be awarded on the basis of low bid or best value, and any other information deemed necessary by the department to inform interested parties of the contracting opportunity.

(2) Significant factors that the department reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors.

(3) The relative importance or the weight assigned to each of the factors identified in the request for proposals.

(4) Where a best value selection method is used, the department may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the department shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the department to ensure that any discussions or negotiations are conducted in good faith.

(e) For those projects utilizing low bid as the final selection method, the competitive bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and awards shall be made to the design-build entity that is the lowest responsible bidder.

(f) For those projects utilizing best value as a selection method, the design-build competition shall progress as follows:

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be weighted as deemed appropriate by the department:

- (A) Price, unless a stipulated sum is specified.
- (B) Technical design and construction expertise.
- (C) Life-cycle costs over 15 or more years.

(2) Pursuant to subdivision (d), the department may hold discussions or negotiations with responsive proposers using the process articulated in the department's request for proposals.

(3) When the evaluation is complete, the responsive proposers shall be ranked based on a determination of value provided, provided that no more than three proposers are required to be ranked.

(4) The award of the contract shall be made to the responsible design-build entity whose proposal is determined by the director to have offered the best value to the public.

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the director shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award.

(6) The statement regarding the director's contract award, described in paragraph (5), and the contract file shall provide sufficient information to satisfy an external audit.

SEC. 6. Section 20119.1 of the Public Contract Code is amended to read:

20119.1. As used in this article:

(a) "Best value" means a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications.

(b) "Best value contract" means a competitively bid contract entered into pursuant to this article.

(c) "Best value contractor" means a properly licensed person, firm, or corporation that submits a bid for and is awarded a best value contract.

(d) “Best value score” means the resulting score when the school district divides the bidder’s price by the bidder’s qualification score.

(e) “Demonstrated management competency” means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(f) “Financial condition” means the financial resources needed to perform the contract. The criteria used to evaluate a bidder’s financial condition shall include, at a minimum, capacity to obtain all required payment bonds and required insurance.

(g) “Governing board” or “governing board of the school district” means the governing board of the Los Angeles Unified School District.

(h) “Labor compliance” means the ability to comply with, and past conformance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder’s labor compliance shall include, at a minimum, the bidder’s ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the Department of Industrial Relations, its past conformance with such requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(i) “Project” has the same meaning as “public project” as defined in subdivision (c) of Section 22002.

(j) “Qualifications” means financial condition, relevant experience, demonstrated management competency, labor compliance, the safety record of the bidder, and, to the extent relevant, the preceding qualifications as they pertain to all subcontractors proposed to be used by the bidder for designated portions of the work.

(k) “Relevant experience” means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

(l) “Safety record” shall be deemed “acceptable” if a contractor’s experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period do not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(m) “School district” means the Los Angeles Unified School District.

SEC. 7. Section 20119.3 of the Public Contract Code is amended to read:

20119.3. The governing board of the school district shall proceed in accordance with the following when awarding best value contracts under this article:

(a) The school district shall prepare a solicitation for bids and give notice pursuant to Section 20112.

(b) (1) The school district shall establish a procedure to prequalify bidders as required by this code. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records

Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) A best value entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the governing board that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(3) Paragraph (2) shall not apply if any of the following requirements are met:

(A) The school district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the school district prior to January 1, 2017.

(C) The entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(4) For purposes of this subdivision, “project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

(c) Each solicitation for bids shall do all of the following:

(1) Invite prequalified bidders to submit sealed bids in the manner prescribed by this article.

(2) Include a section identifying and describing the following:

(A) Criteria that the school district will consider in evaluating the qualifications of the bidders.

(B) The methodology and rating or weighting system that will be used by the school district in evaluating bids.

(C) The relative importance or weight assigned to the criteria for evaluating the qualifications of bidders identified in the request for bids.

(d) Final evaluation of the bidders shall be done in a manner that prevents the identity of the bidders and the cost or price information from being revealed in evaluating the qualifications of the bidders prior to completion of qualification scoring.

SEC. 8. Section 20155.2 of the Public Contract Code is repealed.

SEC. 9. Section 20155.4 of the Public Contract Code is amended to read:

20155.4. (a) A best value contractor shall not be prequalified or shortlisted unless the contractor provides an enforceable commitment to the county that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.



(b) This section shall not apply if any of the following requirements are met:

(1) The county has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the contractor agrees to be bound by that project labor agreement.

(2) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the county prior to January 1, 2017.

(3) The contractor has entered into a project labor agreement that will bind the contractor and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(c) For purposes of this section, “project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

SEC. 10. Section 22164 of the Public Contract Code is amended to read: 22164. The procurement process for the design-build projects shall progress as follows:

(a) (1) The local agency shall prepare a set of documents setting forth the scope and estimated price of the project. The documents may include, but need not be limited to, the size, type, and desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the local agency’s needs. The performance specifications and any plans shall be prepared by a design professional who is duly licensed and registered in California.

(2) The documents shall not include a design-build-operate contract for any project. The documents, however, may include operations during a training or transition period but shall not include long-term operations for any project.

(b) The local agency shall prepare and issue a request for qualifications in order to prequalify or short-list the design-build entities whose proposals shall be evaluated for final selection. The request for qualifications shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the expected cost range, the methodology that will be used by the local agency to evaluate proposals, the procedure for final selection of the design-build entity, and any other information deemed necessary by the local agency to inform interested parties of the contracting opportunity.

(2) Significant factors that the local agency reasonably expects to consider in evaluating qualifications, including technical design and construction expertise, acceptable safety record, and all other nonprice-related factors.

(3) A standard template request for statements of qualifications prepared by the local agency. In preparing the standard template, the local agency may consult with the construction industry, the building trades and surety industry, and other local agencies interested in using the authorization provided by this article. The template shall require the following information:

(A) If the design-build entity is a privately held corporation, limited liability company, partnership, or joint venture, a listing of all of the shareholders, partners, or members known at the time of statement of qualification submission who will perform work on the project.

(B) Evidence that the members of the design-build team have completed, or demonstrated the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project, and a financial statement that ensures that the design-build entity has the capacity to complete the project.

(C) The licenses, registration, and credentials required to design and construct the project, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance.

(E) Information concerning workers' compensation experience history and a worker safety program.

(F) If the proposed design-build entity is a corporation, limited liability company, partnership, joint venture, or other legal entity, a copy of the organizational documents or agreement committing to form the organization.

(G) An acceptable safety record. A proposer's safety record shall be deemed acceptable if its experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period does not exceed the applicable statistical standards for its business category or if the proposer is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(4) (A) The information required under this subdivision shall be certified under penalty of perjury by the design-build entity and its general partners or joint venture members.

(B) Information required under this subdivision that is not otherwise a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

(c) (1) A design-build entity shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the local agency that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The local agency has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or

contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the local agency prior to January 1, 2017.

(C) The entity has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, “project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

(d) Based on the documents prepared as described in subdivision (a), the local agency shall prepare a request for proposals that invites prequalified or short-listed entities to submit competitive sealed proposals in the manner prescribed by the local agency. The request for proposals shall include, but need not be limited to, the following elements:

(1) Identification of the basic scope and needs of the project or contract, the estimated cost of the project, the methodology that will be used by the local agency to evaluate proposals, whether the contract will be awarded on the basis of low bid or best value, and any other information deemed necessary by the local agency to inform interested parties of the contracting opportunity.

(2) Significant factors that the local agency reasonably expects to consider in evaluating proposals, including, but not limited to, cost or price and all nonprice-related factors.

(3) The relative importance or the weight assigned to each of the factors identified in the request for proposals.

(4) Where a best value selection method is used, the local agency may reserve the right to request proposal revisions and hold discussions and negotiations with responsive proposers, in which case the local agency shall so specify in the request for proposals and shall publish separately or incorporate into the request for proposals applicable procedures to be observed by the local agency to ensure that any discussions or negotiations are conducted in good faith.

(e) For those projects utilizing low bid as the final selection method, the competitive bidding process shall result in lump-sum bids by the prequalified or short-listed design-build entities, and awards shall be made to the design-build entity that is the lowest responsible bidder.

(f) For those projects utilizing best value as a selection method, the design-build competition shall progress as follows:

(1) Competitive proposals shall be evaluated by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be weighted as deemed appropriate by the local agency:

(A) Price, unless a stipulated sum is specified.

(B) Technical design and construction expertise.

(C) Life-cycle costs over 15 or more years.

(2) Pursuant to subdivision (d), the local agency may hold discussions or negotiations with responsive proposers using the process articulated in the local agency's request for proposals.

(3) When the evaluation is complete, the responsive proposers shall be ranked based on a determination of value provided, provided that no more than three proposers are required to be ranked.

(4) The award of the contract shall be made to the responsible design-build entity whose proposal is determined by the local agency to have offered the best value to the public.

(5) Notwithstanding any other provision of this code, upon issuance of a contract award, the local agency shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award.

(6) The statement regarding the local agency's contract award, described in paragraph (5), and the contract file shall provide sufficient information to satisfy an external audit.

SEC. 11. (a) The amendments made by this act shall not apply to contracts that were advertised for bid or awarded before January 1, 2017.

(b) For contracts advertised for bid or awarded before January 1, 2017, for which an entity or contractor provided an enforceable commitment to a school district or county regarding the use of a skilled and trained workforce, pursuant to Section 17250.25 or 17407.5 of the Education Code or Section 20119.3 or 20155.4 of the Public Contract Code, the school district or county may grant a request by the entity or contractor that made the enforceable commitment to comply instead with this act.

SEC. 12. The Legislature finds and declares that Section 3 of this act, which adds Chapter 2.9 (commencing with Section 2600) to Part 1 of Division 2 of the Public Contract Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Because this act expressly subjects local public entities to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) for monthly reports to the awarding body on compliance with skilled and trained workforce requirements for public contracts, the act furthers the purpose of Section 3 of Article I of the California Constitution.